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Department of Regulatory Agencies
Division of Real Estate

Real Estate *news*

How to Win With a Pair



*By Clifford L. Cryer, SCRP, MAI, SRPA, W. Thomas Cryer, SCRP, SRA, and Arnold M. Schwartz, SCRP, RM, SRA
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Contributors: Lou Garone, R. John Fausett, Carl Hegewald and Harold Ovsowitz*

This article is being presented in 3 installments. This first installment will consider some background and challenges related to paired sales analysis, and requirements regarding data analysis and verification. The second installment, appearing in our Fall 2013 newsletter, will consider analysis of adjustments for physical and non-physical features and characteristics using paired sales analysis. The third and final installment, appearing in our Winter 2013 newsletter, will consider how to complete the sales comparison grid utilizing the results of paired sales analysis, what to do when current market data is lacking, and documenting your analysis.

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Director's Corner

By Marcia Waters, Division Director

Issues in a Changing Market

As we watch the market continue to thrive, we are receiving inquiries about issues associated with the current real estate climate. Due to low inventories, we are seeing properties marketed in creative ways. We are hearing about issues with broker commissions. The largest complaint we have been receiving is about appraisals, which never ceases to surprise staff. Below are some of the complaints we are seeing, along with an explanation of how they may intersect with the different practice acts.



Coming Soon Signs

We have been receiving calls about brokers using “coming soon” signs. Based on what has been conveyed to Real Estate Commission (“Commission”) staff, a broker places a yard sign at the property, with a “coming soon” sign rider. Brokers representing buyers begin calling on the sign, but they are informed that showings will not be allowed for a specified period of time, generally three to four days later. In some instances, the buyer’s broker is unable to reach the listing broker. When the property is finally entered into the local listing service, typically on the same date that the showings are scheduled to begin, the property is already listed as under contract.

From the Commission’s standpoint, the seller and the listing broker can negotiate that there will be some form of marketing done on the property prior to entry into the multiple listing service (“MLS”). The seller may also prohibit the listing broker from entering the property into the MLS. However, problems may arise if the listing broker has failed to counsel the seller about any risks that this may have on the transaction, including impeding the seller’s ability to obtain a price and terms that would be acceptable to the seller. If the Commission were to receive a complaint of this nature, we would be obligated to investigate because the listing broker may have violated the brokerage relationship act.

Commission Payments

The Real Estate Commission (“Commission”) does not become involved in Commission disputes between brokers. We have been hearing of a trend lately where brokerages are failing to pay brokers due to incomplete transaction files. The broker’s commission is paid only when all documentation has been provided to close the file. This is generally an area in which the Commission has no authority to resolve the payment dispute. We have received some complaints, particularly from commercial brokers,

that their commissions are withheld for months and for no apparent reason. The brokers, who represented buyers or tenants, have expressed concerns that their commissions have been withheld in order for the listing brokerage to cover its overhead costs. This is a potential license law violation. In the latter scenario, the commission owed could be viewed as money belonging to others which the brokerage is not entitled to use for its own benefit.

Appraised Values in Today’s Market

It is not unusual for the Board of Real Estate Appraisers (the “Board”) to receive complaints about the appraised value being too low or too high. From 2005 through 2009, many complaints were regarding appraisals being too high. Since 2009, the complaints have trended toward appraised values that were too low. The market has changed within the latter time span and there are some challenges to appraising in today’s market. As the market continues to thrive, we are seeing appraisers inundated with appraisal assignments, and in some cases, subject to unreasonable assignment conditions.

Some clients restrict the data that appraisers can use to the last three or six months, or will prohibit them from using data outside of the subject property’s market. The matter is further frustrated when accurate sales data is not updated in the MLS. During the course of an appraisal, the appraiser needs to analyze sales data in order to arrive at a value conclusion. If the MLS data is inaccurate, the appraiser is not provided with a copy of the contract, or the listing broker fails to speak to the appraiser, any one of these can cause a lack of data that impacts the value conclusion. We have seen instances where the lack of communication between the listing broker and the appraiser resulted in the appraiser being unaware of multiple offers being submitted for the subject property. This information would have been very helpful for the appraiser. There are many brokers and appraisers that believe that they are no longer able to speak to each other, which is simply not the case.





In the complaints that the Board receives, it is not uncommon for us to see appraisers trying to make the best of the bad situation when it comes to property information and a lack of communication with the broker. If there are issues with the appraisal due to the appraiser being unfamiliar with the market that is potentially a violation of the appraisal practice standards. If the appraiser does not perform an adequate analysis of the market, the subject property or the comparables, this also may be a violation of the practice standards. Additionally, if the appraiser is not appropriately credentialed to perform the assignment, this too is an issue that falls within the license law.

If you are seeing practices that appear to be in violation of the license law, please file a complaint. It is the Division's goal to ensure that practice deficiencies are appropriately addressed and that consumers are protected.

THE HONORABLE JOHN W. HICKENLOOPER
Governor of Colorado

Barbara Kelley
Executive Director
Department of Regulatory Agencies
Marcia Waters
Director, Division of Real Estate
Hollis Glenn
Deputy Director, Division of Real Estate

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COLORADO REAL ESTATE NEWS
Colorado Division of Real Estate
1560 Broadway, Suite 925
Denver, CO 80202-4305
Phone: (303) 894-2166
V/TDD (303) 894-7880
www.dora.state.co.us/real-estate

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POLICY

Neither all nor any portion of the articles published herein shall be

Continued



INTRODUCTION

An ever-present challenge faced by appraisers is to provide market-based support for reasonable and appropriate adjustments applied in the sales comparison approach. Although several techniques are available to quantify adjustments, the primary purpose of this article is to illustrate how appraisers can derive adjustments using paired sales analysis, specifically from less-than-perfect pairings, e.g., pairings that have one or more value-influencing features and characteristics which are unrelated to the element of comparison for which the pairing is being done.



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Why is this an important topic? It's important because the use of quantitative adjustments for which no market support exists can be misleading and is unacceptable appraisal practice. The appraiser's analysis of market data should provide support for appropriate adjustment values (or the lack thereof) in the sales comparison grid. This article discusses in detail how to use paired sales analysis to provide the requisite market-based support, whether that data exists within the comparables used for the sales comparison approach or is collected and analyzed separately.

"How much will that add to my appraisal?" This is a common question homeowners ask as they highlight the physical characteristics and extra features in their homes. *"How do I justify and support the adjustments in the real world"* is the question the competent appraiser seriously considers. The reliable answer is found in the market's reaction to different features, amenities and characteristics. As the appraiser analyzes a number of different comparable sales, some of which may not be used in his or her sales comparison grid, certain features will be found in some properties and not in others. This makes it possible to identify the contributory value of a particular feature by analyzing pairs of sales transactions to isolate a single different element of comparison and to extract the adjustment for the difference directly from the market. Verification of the market

data with market participants is an extremely useful reality check in the derivation of adjustments. Appraisers who want to win will provide solid and defensible conclusions of value and must be proficient in using pairs of sold properties to their advantage in arriving at adjustment amounts.

The concept of pairing sales, or comparing competing sales to derive appropriate and credible market-based adjustments for differences between them, provides the information necessary to accurately derive the contributory value of various components of a property.

CHALLENGES PRESENTED BY PAIRED SALES ANALYSIS

Plentiful market data, analyzed extensively, provides documented justification for adjustment amounts. However, appraisers must often work with limited sales information and perfect pairs are nearly impossible to find. Even in this circumstance, an extensive analysis of limited sales information can provide the basis for adequately supported, although possibly empirically derived, adjustments for the contributory value of differences in a property's features, amenities and characteristics. These documented results are the true "market-driven" adjustment amounts, not just educated guesses. Such documentation should be retained in the appraiser's workfile, and can

be referenced in other appraisals where adjustments are made for the same or similar feature.

The professional appraisal reference work *Appraising Residential Properties, 4th Edition*, pages 339 - 340 (Appraisal Institute, 2007) states, in part, regarding the potential difficulties related to paired sales analysis: "When two sales considered comparable are very similar in all but one characteristic, the appraiser may be able to conclude that the difference in this single characteristic accounts for the difference in their prices... Usually the number of available comparables is limited and an appraiser rarely finds pairs that directly indicate the effect of each element of comparison... Often a more complicated procedure must be applied to obtain the necessary information. To apply this procedure the appraiser makes a series of paired data identifications and repeated adjustments." The methodology presented herein is similar to that presented in an appraiser pre-licensing textbook by Betts and Ely (Cengage Learning, 2008) which states regarding paired sales that "the appraiser might adjust sales for one variable, such as date of sale, before using them as matched pairs to study another variable."

Adjustments applied in the sales comparison approach should be derived from market evidence outside the data set used in the sales grid, if possible. This reduces the dependence of the sales used in the grid on each other, results in

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RICHARD KROHN BECOMES THE NEW REAL ESTATE COMMISSIONER



During the regularly scheduled April Colorado Real Estate Commissioners' meeting Richard "Rich" Krohn was announced as the newly appointed Commissioner of the Colorado Real Estate Commission. His appointment is at the pleasure of Governor Hickenlooper and is a three-year term.

Rich is a licensed attorney and partner at Dufford, Waldeck, Milburn & Krohn, LLP, where he has been practicing law centering on real estate matters since 1976. His areas of focus include, but are not limited to: Real Estate, Land Use, Zoning, Commercial and Construction Law. Rich is also designated as a Real Estate Super Lawyer, a position that he's held every year since the stringent, multifaceted rating system was developed in 2006. In addition to his work with individual clients, Rich writes and lectures for various legal, civic, and professional groups on many real estate related topics.

As a Real Estate Commissioner, Rich's duties will include administration of the law as it pertains to review of applications and issuance of real estate licenses, registration of subdivision developers, consideration and approval of new rules, regulations and contract forms, review of complaints against licensees, and the responsibility to impose disciplinary action against a licensee. We wish Rich all the success possible as he works for the protection of Colorado consumers.



independent adjusted sales price indications, and avoids introducing “inbreeding” of data where the independence of the data is lost. Inbreeding of data may result when a limited data set is used (such as the comparables on the sales comparison grid), and when erroneous sale prices or adjustments cause errors in the adjusted sale prices of the comparable sales, leading to incorrect indications of value. However, circumstances may require that adjustments be developed from data within the sales comparison grid depending on the appraisal problem and the availability of sales data. In this circumstance, the potential for inbreeding of data can be reduced through careful verification of transactional and property data. The competent appraiser recognizes that some quantitative adjustments have better support than others; this fact about the quality and quantity of the data analyzed within the sales comparison approach should be considered by the appraiser in his or her sales comparison approach reconciliation.

When deriving the contributory value of physical features, it is not absolutely necessary for the appraiser to use pairs of sales which are similar to the subject; however, these sales should still appeal to the same set of purchasers as the subject to keep in the same overall value range. If the sales used are superior or inferior to the subject, they will likely not be used in the sales comparison grid, but the

appraiser is still able to derive an adjustment, as long as these sales are similar to each other (with exception of the feature for which the pairing is being done). The difference is expressed, not as a dollar amount, but as a percentage. This percentage is converted to a dollar amount when applied as an adjustment to the comparable under consideration in the sales comparison grid for the subject analysis.

When the sales used in a paired sales analysis are dissimilar to the subject, it is important to express the result of the analysis as a percentage. As an example, your paired sales analysis may be of sales from another subdivision with superior (or inferior) market appeal where homes generally sell for more (or less) than in the subject’s subdivision. If the result of your paired sales analysis is expressed as a dollar amount, it will likely reflect the difference in market appeal of the subdivision, and if applied to a comparable from within the subject’s subdivision would probably result in a skewed adjustment amount. However, when expressed as a percentage and applied to a comparable from within the subject’s subdivision, no effect of the difference in market appeal will be reflected in the adjustment, only the indication of value for the element of comparison being analyzed.

Individuals new to the appraisal profession, and users of appraisals, encounter the terms “matched

sales,” “matched paired sales,” and “paired sales analysis,” but may not fully understand the concept. Accordingly, we shall provide a step-by-step example of its application.

DATA GATHERING AND CONFIRMATION (VERIFICATION)

Illustration 1 is a sample sales comparison grid, which at this point is incomplete. Toward the end of this article we will fill out the adjustment portion of the grid using data gathered from our paired sales analysis. The data presented in *Illustration 1* is the result of sales confirmations from three sources: real estate agents, the MLS, and assessor’s records.

Appraisers must independently and adequately verify factual information. Inappropriate reliance on inaccurate information from biased parties compromises the appraisal process. Relying exclusively on public records and MLS data sources for verification does not adequately verify a sales transaction because the appraiser must understand and identify:

- The conditions of sale (motivation).
- The existence of financing concessions and other sales concessions such as builder incentives, monetary gifts, and personal property included.
- Physical characteristics of the



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Illustration 1 – Sales Comparison Grid (Incomplete)

	Subject	Comparable 1	Comparable 2	Comparable 3
Sale Price	-	\$164,000	\$163,500	\$175,500
Seller Concessions	None	\$0	\$0	\$3,000
Adjusted Sale Price	-			
Contract Date (“meeting of the minds”)	-	1 month prior	2 months prior	4 months prior
Market Conditions	-			
Adjusted Sale Price	-			
Central Air Conditioning	Yes	Yes	No	No
Basement Finish	No	No	No	Yes
Adjusted Sale Price	-			

Unfortunately, some market participants will not cooperate with appraisers or will not take the time to adequately explain a sales transaction. In addition, some market participants will withhold important information or provide inaccurate information. However, the appraiser, who is expected to perform competently, should attempt to verify information with a party to the transaction to provide his or her client with reasonably accurate, adequately supported and credible opinion of defined value. Where any uncertainty exists, extraordinary assumptions may be used, provided that those assumptions are reasonable.

Please stay tuned for the second installment of this article appearing in our Fall 2013 newsletter!



INDUSTRY EXPERTS**THE CFPB'S ABILITY TO REPAY
RULE****WIDE RANGING IMPACTS FOR REAL ESTATE
LENDERS OF ALL SIZES.****INCLUDING PROPERTY OWNERS WHO CARRY BACK
LOANS TO PURCHASERS OF THEIR PROPERTIES.**

TERRY JONES, CMB, BML - CO-CHAIR OF THE LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE
COLORADO MORTGAGE LENDERS ASSOCIATION

On January 10, 2013, the Consumer Financial Protection Bureau (CFPB) issued their final Ability to Repay rule as part of a series of rules required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act). The release of this rule is part of over 2300 pages of final rules published by the CFPB in January that cover not only the Ability to Repay requirements of the Dodd-Frank Act, but also National Mortgage Servicing Rules, Loan Officer Compensation Rules, and rules covering High Cost Mortgage Loans, Appraisals and Escrow Accounts. This article will focus on the CFPB, the Ability to Repay Rule, and we will take up the remainder of these new rules in later issues of this newsletter.

The CFPB which became operational on July 21, 2011 is a new Federal Agency with unprecedented power to protect consumers in financial transactions. It is an independent agency within the Federal Reserve System with an Independent Director and a budget (\$500 million from the Federal Reserve) and is charged with independent rulemaking, research, congressional testimony, enforcement and litigation powers. The objective of the CFPB is to have a single federal agency to receive, manage and respond to consumer financial complaints and to ensure that consumers are protected from unfair, deceptive or abusive acts and practices as well as discrimination.

The Ability to Repay rule covers virtually all closed-end residential mortgage loans where the application is received on or after January 10, 2014. The rule does exempt Home Equity Lines of Credit (HELOCs), Timeshare plans, Reverse Mortgages and temporary loans (construction loans, bridge loans). The rule prohibits any creditor from making a covered mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan according to its terms.

A Creditor can comply with the Ability to Repay rule in any of four different ways:

1. The first way a creditor may comply with the Ability to Repay Rule is by originating a mortgage loan after considering and verifying a minimum of eight factors:
 - a. Current or reasonably expected income or assets, other than the value of the dwelling;
 - b. Current employment status, if the creditor relies on employment income;
 - c. Monthly payment on the covered transaction;
 - d. Monthly payment on any simultaneous loans the creditor knows or should have known



- about;
- e. Monthly payment for mortgage-related obligations;
 - f. Current debt obligations, alimony, and child support;
 - g. Monthly debt-to-income ratio or residual income; and
 - h. Credit history.
2. **OR**, the second way a creditor may comply with the Ability to Repay rule is by originating a loan that falls within the definition of a **Qualified Mortgage (QM)**. To qualify as a QM the loan must:
- a. Provide regular periodic payments; and
 - b. Not include negative amortization, interest-only or balloon features (except for a limited exception for balloon payment QMs described below) or have a loan term exceeding 30 years; and
 - c. Not have total points and fees exceeding 3% of the total loan amount for loans \$100,000 or more, with greater limits for smaller loans; and
 - d. Be underwritten by taking into account the monthly payment for mortgage related obligations using the maximum interest rate that may apply during the first five years and periodic payments of principal and interest based on such interest rate; and
 - e. Involve creditor consideration and verification of: (a) consumer's current or reasonably expected income or assets and (b) current debt obligations, alimony, and child support; and
 - f. **QM 43% DTI Requirement**– Also, to qualify as QM, consumer's monthly debt to total monthly income at time of loan consummation may not exceed 43 percent using the consumer's monthly payment on the loan and any other simultaneous loan creditor knows or has reason to know will be made. OR
 - g. **Temporary QM** - Alternatively, under "special rules," loan may be treated as a QM if it satisfies QM criteria for regular periodic payments, maximum 30-year loan term and maximum points and fees and is eligible (1) for purchase or guarantee by Fannie Mae or Freddie Mac under conservatorship or a limited-life regulatory entity successor to either; (2) insurance by HUD/FHA or the Rural Housing Service; or (3) for VA or Department of Agriculture guarantee. These rules expire on the effective date of a QM rule issued by these agencies or January 10, 2021
 - h. ***In all cases, to qualify for the Safe Harbor provisions of the QM definition***, the loan must satisfy the requirements above and must have an Annual Percentage Rate (APR) that does not exceed the Average Prime Offer Rate (APOR), *a statistic kept and published by Freddie Mac*, by more than 1.5% for a first lien, or 3.5% for a subordinate lien transaction.
 - i. If the loan meets all of the QM requirements above, but has an APR higher than the APOR by more than 1.5% (on a first lien) or 3.5% (on a subordinate lien) the rule provides a "rebuttable presumption of compliance" which essentially leaves it up to the courts to decide whether a loan in this higher cost category is a "Qualified Mortgage"

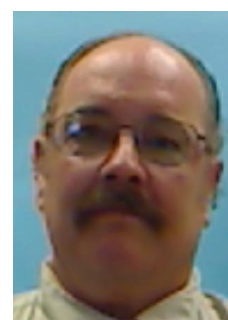
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[Jae Saul](#)

Appraisal Management Companies
Investigator



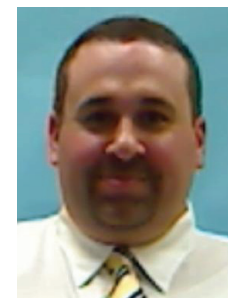
[Walt Sorrentino](#)

Appraiser Investigator
Appraiser Investigations Program



[Aaron Welch](#)

Conservation Easement Compliance
Investigator
Conservation Easement Program



[Cory Nicholson](#)

Communication and Education Specialist
Education, Policy and Communications
Section



THE LANDSCAPE OF HOA REGULATION CONTINUES TO EVOLVE

The Colorado State Legislature recently passed some new laws concerning HOAs. The HOA Information Office and Resource Center is committed to providing the public periodic updates regarding the legal landscape of HOAs.

Below is a summary of HOA bills passed in the 2013 legislative session. If you would like more detailed information regarding a specific bill, please contact the [HOA Information Office and Resource Center](#) at 303-894-2292 or 303-894-2355.

HOA Forums

The Colorado HOA Information Office and Resource Center has been busy holding HOA Community Forums across the State. Homeowners and industry professionals have been attending these forums to learn about the HOA Office and have discussions with the HOA Officer, Gary Kujawski. The forums have provided attendees with resources and assistance in understanding issues and concerns relevant to HOAs, as well as understanding one's rights and obligations of living in a HOA community. Information from the 2012 Annual Report of the Center is reviewed, and an update on current legislation concerning HOAs is addressed. Please check the [HOA Office website](#) for future forum locations, and inform your clients.

New HOA Laws:

The 2013 Colorado Legislature passed a number of bills this session, which are summarized below:

HB13-1134 (HOA Office):

This bill directs the HOA Information Office and Resource Center to conduct a study addressing

the need, options and costs involved regarding HOA issues of concern, including: investigation, verification and resolution of HOA complaints; alternative dispute resolution and mediation for HOA complaints; HOA election monitoring and disputes; declarant-controlled board concerns; protections from threats or defamatory conduct arising in HOA matters against boards, directors, homeowners and residents; and determining a per-unit fee upon which to calculate HOA registration fees. The bill expands the production of educational resources by the HOA Office, and also requires all HOAs (including those that are pre-CCIOA) to register with the HOA Office within the Division of Real Estate and provide additional registration information. (eff. 8/7/13)

HB13-1276 (HOA Debt Collection):

This bill requires HOAs to establish a collection policy that at a minimum specifies: the date on which assessments must be paid to the association and when an assessment is considered past due; any late fees and interest charged; any returned-check charges; and the circumstances under which a delinquent owner is entitled to enter into a payment plan and the minimum terms of the payment plan.



Furthermore, before the entity turns over a delinquent account to a collection agency or attorney, it must send the unit owner a written notice of delinquency specifying: the total amount due, with an accounting of how the total was determined; whether the opportunity to enter into a payment plan exists and instructions for contacting the entity to enter into the payment plan; the name and contact information for the individual the owner may contact to request a copy of the owner's ledger to verify the amount of the debt; and that action is required to cure the delinquency and failure to do so within 30 days may result in the account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the owner's property and other remedies available under Colorado law.

The association, holder or assignee of the association's lien, may only proceed to foreclosure if the balance of the assessments and charges secured by the lien equals or exceeds 6 months of common assessments. The association board must vote on an individual basis to proceed with foreclosure on any specific unit. Owners that are delinquent will have a one-time opportunity to enter into a payment plan to bring their account current, and the payment plan must be for a minimum of six months. The owner must make the payments under the plan as well as pay their current monthly assessment obligations. If one fails to make these payments, the association may proceed with collections. (eff. 1/1/14)

HB13-1277 (HOA Manager Licensing):

Community association managers, management company CEOs, and executives of management companies who directly supervise managers will be required to be licensed in Colorado, starting July 1, 2015.

To procure a license, individuals must hold one or more of the following credentials: the Certified Manager of Community Associations (CMCA) certification awarded by the National Board of Certification

for Community Association Managers; the Association Management Specialist (AMS) designation awarded by Community Associations Institute (CAI); the Professional Community Association Manager (PCAM) designation awarded by CAI; or any other credential identified by the Director of the Division of Real Estate.

In addition, one must complete any educational or continuing education requirements as determined by the Division of Real Estate, and pass an examination relating to Colorado law, which includes the Colorado Common Interest Ownership Act (CCIOA), as well as the legal documents and statutes that enable a community association to operate.

Prior to obtaining a license, one must pass a criminal background check. In addition, licensed managers may be subject to discipline by the Division of Real Estate for a variety of offenses. Depending upon the severity of the offense, the discipline may include: an administrative fine not to exceed \$2,500 for each separate offense; censure of a licensee; probation with terms; temporarily suspend a license; or permanently revoke a license.

This bill is lengthy and one should review it in its entirety to become familiar with all its provisions. The Division of Real Estate will perform rule-making in order to implement this bill. (eff. 1/1/15)

SB13-126 (Electric Vehicle Charging stations):

This bill allows the installation and use of electric vehicle charging stations on one's property lot and on limited common elements designated for an individual owner's use. This law however, does not require an association to incur expenses with regard to the station's installation. The association will

be able to require: adherence to bona-fide safety requirements; registration of the charging station with the association within 30 days of installation;

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- j. On May 29, 2013, the CFPB adopted a new, category of qualified mortgages for certain loans originated and held in portfolio for at least three years (subject to certain limited exceptions) by small creditors (less than 2 billion in assets, originating 500 or fewer loans per year that are held in portfolio for at least 3 years), even if they do not operate predominantly in rural or underserved areas. The loans must meet the general restrictions on qualified mortgages with regard to loan features and points and fees, and creditors must evaluate consumers' debt-to-income ratio or residual income. However, the loans are not subject to a specific debt-to-income ratio as they would be under the general qualified mortgage definition. Further, the May 29th rule also expands the tolerance for the Safe Harbor for loans made by such small creditors from 1.5% to 3.5% over the APOR to account for the small creditors higher cost of funds.
3. **OR**, the third way a creditor organization may comply with the Ability to Repay rule is by originating a Rural Balloon Payment QM.
 - a. Balloon Payment QMs must generally meet all of the QM requirements above (except for the balloon payment prohibition) if they are made by a creditor organization, where more than half of the organization's first-lien covered transactions in the prior calendar year were secured by properties in rural areas or underserved counties as set forth in the CFPB's list of rural or underserved counties which can be found at: http://files.consumerfinance.gov/f/201305_cfpb_final-list_2013-rural-or-underserved-counties.pdf
 - b. The organization must have assets below \$2 billion.
 - c. The organization (including affiliates) must have originated no more than 500 first lien covered transactions in the preceding calendar year.
 - d. The loan must not be subject to a forward commitment to sell the loan after consummation, other than to a creditor that itself is eligible to make Balloon-Payment QMs.
4. **OR**, the fourth and final way a creditor may comply with the Ability to Repay rule is by refinancing a "nonstandard mortgage" into a "standard mortgage".
 - a. This option applies only to mortgages that a creditor holds or servicers. Subservicers and third parties cannot use this option.
 - b. If this option is utilized, the refinance may not cause the consumer's principal balance to increase
 - c. No cash out refinances are allowed under this option, the proceeds must go only to pay off the original mortgage and for closing or settlement charges appearing on the HUD-1 settlement statement.
 - d. The consumer's monthly payment must materially decrease (i.e. at least 10%)

The Ability to Repay rule also broadens the penalties in the Truth in Lending Act for failure to consider the Ability to Repay properly. The consumer may be able to recover special statutory damages equal to the sum of **All** finance charges and fees paid by the consumer in addition to actual damages, statutory damages, court costs and attorney's fees for a period up to 3 years from the date of the violation. Further, in a defense raised by the consumer in a foreclosure action, there is no time limit on the consumer's ability to assert violation of the Ability to Repay rule (although the consumer cannot recover more than the first 3 years of finance charges and fees plus actual damages and reasonable attorney fees).



When the Ability to Repay rule takes effect on January 10, 2014, the most likely effect is that most, if not all lenders will restrict lending to the Qualified Mortgage space, primarily because of the risk of litigation outside the Qualified Mortgage parameters. The Qualified Mortgage provides a Safe Harbor (as outlined above) which means that if a court finds that the loan the creditor originated was a QM within the safe harbor definition, then that finding conclusively establishes that the creditor complied with the Ability to Repay requirements when originating the mortgage. It is certainly possible that over time, as the case law surrounding the Ability to Repay rule is established through litigation and court decisions that some lenders may choose to originate outside of the QM box, but it is likely that such “non QM” lending will be at significantly higher cost to the consumer than “inside the box” QM lending.

A final item worthy of mention here is the impact the Ability to Repay rule has on “seller carry back” transactions. Because the Ability to Repay rule applies to all creditors regardless of size, sellers of residential properties who carry back loans to buyers to facilitate the sale of a property fall under Dodd-Frank and the Ability to

Repay rule requirements. Dodd-Frank permits a seller to carry back up to three loans in a twelve month period on properties where the seller has not constructed or acted as a contractor for the construction of a residence on such a property in the ordinary course of their business, so long as those loans generally meet the Ability to Repay requirements, are fully amortizing (no balloon payments), the rate must be fixed for at least five years, any rate increases thereafter must be reasonable with annual and lifetime caps, the rate index is widely available, and negative amortization is prohibited. The Loan Officer Compensation rule, which was issued by the CFPB in January (and will be the subject of a later article in this newsletter), in defining who is considered a Loan Originator by the CFPB, creates a “Seller Financiers; one property” category that allows one loan transaction by an individual, estate or trust in any twelve month period without requiring that transaction to meet the Ability to Repay requirements nor does it require the loan to be fully amortizing. Thus it would appear that a seller of a residential property could carry back one loan in a twelve month period without considering the Ability to Repay requirements or the fully amortizing requirement of

Dodd-Frank (i.e. it could include a balloon payment feature), but if that same seller were to carry back another loan within twelve months, **both** loans would need to meet the Ability to Repay requirements (including the ban on balloon payments)

Since the penalties for violation of the Ability to Repay rule are so severe, Licensed Real Estate Brokers and Licensed Mortgage Loan Originators contemplating working with property sellers who are considering carrying back a mortgage loan would be well advised to recommend that the seller consult with an attorney experienced in real estate lending and compliance with Dodd-Frank and the Ability to Repay Rule to consider the seller’s circumstances and the risks to the seller in structuring and closing any kind of seller carry back financing.

To learn more about the CFPB’s Ability to Repay Rule (or any of the other mortgage related rules the CFPB has issued) go to: <http://www.consumerfinance.gov/mortgage-rules-at-a-glance/>. There you will find a chart with links to the final rules along with links to the Small Entity Compliance Guides for each of the rules which provide plain language summaries of the CFPB rules plus CFPB videos explaining each of the mortgage related rules.



News, Notes and Information from the Division of Real Estate

Appraiser Notes

May 2, 2013 – AMC rulemaking hearing

- The Board of Real Estate Appraisers held a rulemaking hearing to add, repeal, and amend existing rules with respect to implementation of the new Appraisal Management Company legislation that was effective July 1, 2013.

July 1, 2013 – Emergency rulemaking hearing

- As part of the Board of Real Estate Appraisers sunset bill, the “Registered Appraiser” credential was eliminated as one of the levels of appraiser licensure, references to morality were eliminated as a standard for applicants, and a new credential type “Ad Valorem” was established for employees of county assessors and staff of the Division of Property Taxation.

An emergency rulemaking hearing was held to add, repeal, and amend existing rules with respect to this legislation that was effective July 1, 2013. A permanent rulemaking was held July 11, 2013.

Senate Bill 13-155

- With the passage of Senate Bill 13-155, the license credential category of “Registered Appraisers” has been eliminated.
- The Division is using the term “Expired” on the online licensing database showing the legislative elimination of the credential. Please be advised this not a reflection of any negative actions or lack of action on the licensee’s part to maintain credentials.
- If you have questions concerning Senate Bill 13-155 and its impact, please contact the division at 303-894-2334.

Real Estate Broker Notes

June 18, 2013 – A non-rulemaking hearing for the 2014 Commission approved real estate contracts. (Proposed Contracts)

This is the next step in having all contracts and forms approved in August, and a finalized “Draft” posted and distributed to educators and publishers by October 1, 2013.



News, Notes and Information (Continued)

Conservation Easement Oversight Commission

Qualified Individuals Needed

- The Conservation Easement Oversight Commission (CEOC) has two vacancies: one vacancy representing a Land Trust or Local Government Open Space or Land Conservation Agency Certified by the Division of Real Estate and one vacancy for an individual competent and qualified to analyze the conservation purpose of conservation easements. The CEOC meets quarterly to provide advice to the Division of Real Estate and the Department of Revenue regarding conservation easements. Beginning in 2014 the CEOC and Division of Real Estate will review and approve all conservation easement tax credit applications.

Upcoming Meetings

- Rulemaking hearings and Board and Commission meetings are open to the public and take place at the Department of Regulatory Agencies offices, 1560 Broadway, Denver, CO, 80202. All meetings start at 9 a.m., but location varies within the building. Please check the Division's calendar for a list of all upcoming meetings and rule making hearings, with location and agenda.
- For the full text of these rules, or any other rules and position statements passed by the Board or Commissions, please visit [Division's Statutes, Rules and Position Statements Page](#).

Continued from Page 13

compliance with the association's governing documents, reasonable aesthetic provisions concerning dimensions, placement and external appearance, and design specifications; that the owner engage the services of a licensed and registered electrical contractor familiar with the installation and code requirements for electric vehicle charging stations; provide proof of insurance or payment of the association's increased insurance premium costs related to the charging station; and removal of the system if necessary to maintain the common elements. (eff. 5/3/13)

SB13-183 (Water Conservation Measures):

This bill addresses drought conditions and water conservation measures in common interest communities. Regarding the installation of new landscaping or modifying existing landscaping, associations cannot require that turf grass must be installed.

In addition, the association cannot require an owner to water their landscaping in violation of water use restrictions, however, the unit owner shall water their landscaping appropriately, but not in excess of any such water restrictions. An association is permitted to adopt and enforce design or aesthetic guidelines that: require the installation of drought-tolerant vegetative landscapes; regulate the type, number and placement of drought-tolerant plantings; and regulate the hardscapes which an owner may install. (eff. 5/10/13)



Dora
Department of Regulatory Agencies
Division of Real Estate

INDUSTRY EXPERTS

Articles written and submitted by members of the real estate industry with varied experience in different fields. The views and opinions expressed are those of the author and do not represent the views or opinions of the staff of the Division of Real Estate or DORA.

THE MYTHS & FACTS OF TITLE INSURANCE

MICKEY SANDERS, DIRECTOR OF REALTOR TRAINING AT CHICAGO TITLE OF COLORADO



Want to clear the table at a dinner party? Make sure the seat on the plane next to you stays empty?

Whenever someone asks you what you do for a living hold your head high and proudly tell them "I work for a title insurance company." That will pretty much bring the conversation to a screeching halt.

Title insurance is unlike any other type of insurance. Title insurance insures what has happened in the past as opposed to what may happen in the future.

The truth is the title insurance industry is a hard working group of individuals. We are a very proud group that enjoys serving the consumer and assisting you the real estate profession. We also have some very interesting closings and claims.

I hope with this article I can dispel some of the myths about title insurance.

MYTH:

The title commitment represents the current state of title to the property.

FACT:

Fact: Neither the title commitment nor the title policy contain representations of the state of title. The title commitment is an offer to issue insurance subject requirements being met while including specific exclusions and exceptions.

MYTH:

Title insurance is just like casualty insurance.

FACT:

Title Insurance is a "risk avoidance" insurance that provides indemnity coverage and defense to the insured for loss or damage directly incurred by the insured, or incurred as a result of a third party claim, from a covered risk that exists on the date of the policy. Title insurance insures what has happened in the past!



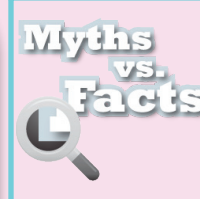
Dora
Department of Regulatory Agencies
Division of Real Estate

MYTH:

Title insurance is not necessary if a property is sold or refinanced within a short period of time from the purchase date.

FACT:

Whether a home is sold or refinanced one day, week, month, year or century after the original policy is issued a new search must be done. There are various issues that may arise after the issuance of the policy. To assist the consumer most title companies have a "re-issue" rate in place. When a homeowner qualifies for a re-issue rate they will pay less for the policy.

**MYTH:**

Title insurance losses are low.

FACT:

In 2012 the title insurance industry paid over a half billion dollars in claims. However, focusing on losses paid by the title insurance industry as a measure of performance is misleading without also paying attention to their effectiveness in identifying and removing title problems before the closing. Although the title insurance industry strives for complete risk elimination title companies will continue to experience losses.

MYTH:

The term "public records" are the same as the chain of title.

FACT:

Public records include documents that provide constructive notice, but not every recorded document in the chain of title provides constructive notice.

MYTH:

Title insurance rates can be negotiated by the customers.

FACT:

Colorado is a "Filed Rate" state. Unlike some other states it is a Division of Insurance (DOI) rule that title companies must charge the rate that is currently on file with the DOI. It is a violation of DOI rules and a title company can be fined for charging more or less than their filed rate.

MYTH:

Title insurance, as well as closing fees, are a large part of the closing costs.

FACT:

Costs related to the title insurance and closing are a small portion of the total costs for the buyer and seller. Charges that are out of the control of the title company such as pre-paid items, recording fees, taxes and lender charges make up a majority of the customers out of pocket expenses.

MYTH:

Title insurance coverage is permanent and benefits subsequent parties.

FACT:

Homeowners Policy covers homeowners forever. The policy insures anyone who inherits the title because of the homeowner's death as well as the spouse who receives the title after dissolution of marriage. Although loan policies generally do benefit assignees of the loan, coverage may be lost or impaired because of future loan modifications.



Remember to Check the Title to the Property For:

When checking the title to a property remember these three key points.

1. Assessed Property Value

The counties value may not represent the true taxable value of property in today's changing market.

2. Document Fraud

Criminals are using property records to commit financial crimes as well as identity theft. There are instances where the homeowner is attempting to sell or re-finance the property and only then discovers the fraud.

3. Incorrect Liens

Due to various types of errors, a lien can be recorded on a property, make sure to follow up and double check.





Upcoming Board and Commission Meetings

Board of Real Estate Appraisers	Real Estate Commission	Board of Mortgage Loan Originators	Conservation Easement Oversight Commission
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August

	<u>August 5, 2013 9:00 a.m., Conference Room 1250C</u>	<u>August 27, 2013 9:00 a.m., Conference Room 1250C</u>	<u>August 26, 2013 10:00 a.m., Conference Room 1250C</u>
	<u>August 6, 2013 9:00 a.m., Conference Room 1250C</u>		

September

<u>September 5, 2013 9:00 a.m., Conference Room 1250C</u>			
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October

	<u>October 1, 2013 9:00 a.m., Conference Room 1250C</u>		
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Disciplinary Action Taken by the Board of Real Estate Appraisers

Alphabetical by last name, real estate brokers only. List contains discipline from April 1, 2013 - June 30, 2013.

Griego, Michael R. - Fine, Coursework and Supervision

****Note:** This notice serves to inform the public of the current and/or most recent disciplinary action taken against the individual listed. It DOES NOT, nor should it be intended to, serve as a complete listing of any and all discipline taken against the licensee. For complete license information including license status and additional disciplinary actions, please visit www.dora.colorado.gov/dre and click "Division of Real Estate."

Disciplinary Action Taken by the Real Estate Commission

Alphabetical by last name, real estate brokers only. List contains discipline from April 1, 2013 - June 30, 2013.

Brunner, Ruth Lynn - Public Censure, Permanent Revocation and a Fine

Hassing, Mary F. - Public Censure, Relinquishment, Fine and Coursework

Miner, Wayne - Public Censure, Relinquishment, Stayed Fine and Course Work

Coutts, Jeffrey A. - Public Censure, Fine, Restitution, Probation Requiring Supervision and Coursework

Rogers, Craig Thomas - Public Censure, Permanent Revocation and Stayed Fine

Smith, Cynthia Marie - Public Censure, Voluntary Surrender, Fine and Stayed Fine

Titus, Stephen J. - Public Censure, Suspension, Fine, Coursework and Probation Requiring Supervision

Vigil, Julian A. - Public Censure, Permanent Revocation and Stayed Fine

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Disciplinary Action Taken by the Board of Mortgage Loan Originators

Alphabetical by last name, real estate brokers only. List contains discipline from April 1, 2013 - June 30, 2013.

Cheek, Leslie - Public Censure, Civil Penalty and Restitution

Reid, Christopher - Public Censure, Voluntary Relinquishment, Fine

Vigil, Julian A. - Public Censure, Voluntary Relinquishment, Restitution and Stayed Fine

Villagrana, Gustavo - Public Censure, Voluntary Relinquishment and Fine

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